

130278

1941 Supplement

To

Mason's Minnesota Statutes

1927

1939 to 1941

(Supplementing Mason's 1940 Supplement)

Containing the text of the acts of the 1941 Session of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with Law Review Articles and digest of all common law decisions.

Edited by
the
Publisher's
Editorial Staff

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St. Paul, Minnesota*

MASON PUBLISHING CO.

SAINT PAUL, MINNESOTA

1941

Giving of a chattel mortgage in usual form to secure a note after its due date was an acknowledgment and tolled statute of limitations so that it began to run from date of such acknowledgment. *Reconstruction Finance Corp. v. O.*, 290NW230. See Dun. Dig. 5624.

8358. Mortgaged property subject to garnishment, etc.

Where defendant was liable as endorser upon promissory note made by bankrupt third party, payable to garnishee bank, which held as collateral accounts receivable of bankrupt and an "office check" payable to defendant by garnishee, funds represented by office check were payable only upon contingency that pledged receivables would be sufficient to retire principal to garnishee, there was a "contingency" which prevented garnishment. *S. T. McKnight Co. v. T.*, 296NW569. See Dun. Dig. 3967.

CONDITIONAL SALES

8360. When void unless filed.

Conditional sales contracts for motor vehicles. Laws 1941, c. 452.

1. Conditional sales in general.

Right of vendee to recover sums paid under rescinded contract does not rest on the agreement, but is grounded on theory that vendor, having obtained money under a contract made void by rescission, is unjustly enriched at vendee's expense and should be subjected to a legal duty to restore that which has been improperly gained, and in replevin by assignee of vendor's interest in a conditional sales contract, plaintiff may not be subjected to counterclaim for money paid to vendor based on rescission. *Kavli v. L.*, 292NW210. See Dun. Dig. 8652.

1. Who protected.

Where finance company purchased cars from manufacturer and sold them to dealer under conditional sales contracts, finance company was protected as against an attaching creditor by Uniform Trust Receipts Law, even if title passed from manufacturer to dealer rather than to finance company thereby nullifying the conditional sales contracts as such. *Universal Credit Co. v. M.*, 105Pac(2d)(Cal)1003.

Where conditional sales contract was not filed immediately, but previous to sale of chattels by conditional buyer to third person, filing of contract constituted constructive notice to third person of state of title. *Duro Co. v. W.*, 16Atl(2d)(NJ)64.

Fraudulent conveyances of chattels—chattel mortgages—sales—conditional sales. 24MinnLawRev832.

8362. Same.

Rights of a good faith purchaser from registered automobile owner are subject to those of assignee of a prior and duly recorded conditional sale contract. *Slawik v. C.*, 296NW496. See Dun. Dig. 8655.

8363-1. Definitions.

Under Pennsylvania act conditional sales contract and refilled contract covering bottling equipment of a brewery, which was not placed in the brewery itself but attached to its ice plant, held invalid against state court receiver and trustee in bankruptcy where real estate to which bottling equipment was annexed was not properly described in the statement accompanying the filed contract, in the body of the contract, nor in the refilled contract, Pennsylvania having adopted the institutional theory under which normal improvements enhancing the value of the freehold are within the coverage of a mortgage on an industrial plant whose chief value is its

attribute as a business institution. *Brownsville Brewing Co.*, (CCA3)117F(2d)463, 45AmB(NS)402.

8363-2. Seller to give notice.

Whether oral agreement extending time for performance was supported by consideration or not, vendor must still abide by it and cannot retake property conditionally sold during period of extension without being liable for conversion. *Hafz v. M.*, 287NW677. See Dun. Dig. 8652.

Vendor in conditional sale of automobile waived any right it might have had by virtue of letter giving notice of intention to repossess by subsequently agreeing to an extension of time completely inconsistent with letter. *Id.* See Dun. Dig. 8652.

Evidence sustains conclusion of lower court that plaintiff suffered damage to the extent of \$289 for conversion of automobile by conditional vendor. *Id.* See Dun. Dig. 8652a.

In action to recover damages for conversion of a conditional vendee's interest in automobile, evidence held to sustain finding that there was an oral agreement to extend time for performance of contract. *Id.* See Dun. Dig. 8652a.

Court of equity should not accord a conditional vendor remedy by foreclosure of right of redemption since conditional vendor has a conditional title, not a lien, and his remedy is replevin. *McManus Labs. v. M.*, 21NYS(2d) 826.

8363-6. Motor vehicles—Repossession by seller—Reinstatement of contract.—Whenever any motor vehicle is possessed or repossessed by the seller or assignee of the seller under and by virtue of a default in the terms of any contract of sale conditioned that the title to the property for or on account of which the same was given shall remain in the vendor, the person possessing or repossessing the same, in the event that 50 per cent or more of the original purchase price has been paid, shall hold and retain such motor vehicle in his possession, and shall not sell or dispose of the same or transfer title thereto, for a period of 30 days after the date of such possession or repossession. During such 30 day period the purchaser under such contract may regain possession thereof and reinstate the contract by payment of the amount due on the contract. (Act Apr. 25, 1941, c. 452, 1.)

FILING CHATTEL MORTGAGES, BILLS OF SALE OF CHATTELS, AND CONDITIONAL SALE CONTRACTS EXCEPT IN CITIES OF FIRST CLASS

8364. Bill of sale and other instruments; etc.

A trust receipt authorized by the Uniform Trust Receipt Act is not a note or chattel mortgage exempt from taxation under the California Personal Income Tax Act. *Commercial Discount Co. v. L.*, 105Pac(2d)(Cal)115.

8365. Filing—Fees.

Section 8365, as amended by Laws 1935, chapter 168, supersedes §7002(c), and register of deeds should receive 25 cents and no more for furnishing a certified copy of chattel mortgage filed with him. *Op. Atty. Gen.*, (373B-10(e)), Oct. 18, 1939.

CHAPTER 67A

Sale of Goods

PART I

FORMATION OF THE CONTRACT

8370. Contracts to sell and sales.

Interstate character of a sale, made on a contract for purchase of goods which are to be shipped from another state, is not affected by fact that goods are consigned to shipper or his agent to whom order is given and are to be delivered by such agent, nor by employment of another agent or agency for delivery of goods purchased or by fact that goods ordered by several purchasers are shipped in bulk to agent and are delivered by agent to respective purchasers after breaking bulk. *City of Waseca v. B.*, 288NW229. See Dun. Dig. 4894.

In action for breach of contract by one who traded in a car against dealer who agreed to sell new car on conditional sales contract, wherein contract was made on basis of \$200.00 balance owing finance company on old car instead of \$438.00, evidence held to sustain finding of unilateral mistake on part of dealer which was well known to the plaintiff, warranting reformation. *Rigby v. N.*, 292NW751. See Dun. Dig. 8329.

FORMALITIES OF THE CONTRACT

8379. Statute of frauds.

1. In general.

Despite fact that conditional sales contract may have been within statute of frauds and therefore required to be in writing, time for performance could be extended by an oral agreement entered into at a time subsequent to reduction of contract to writing. *Hafz v. M.*, 287NW677. See Dun. Dig. 8855.

6. Contracts held not within the statute.

Employer wishing to sell stock to employees, transferred a block of stock to an investment banker, and latter made sale to plaintiff employee, verbally agreeing with employee to repurchase the stock in case employment was terminated, held that repurchase agreement was the undertaking of the banker, and not of the employer, and the sale and agreement to repurchase was a single transaction, the partial performance of which took it out of the statute of frauds. *Hassey v. A.*, 28NE(2d)164, 306IllApp37.

CONDITIONS AND WARRANTIES

8387. Definition of express warranty.

Evidence held not to show any failure of title within guaranty in bill of sale of an oil station. *Eckberg v. T.*, 292NW19. See Dun. Dig. 8556.

Vendor who sold mascara with warranty on container and on attached card that product was harmless, assumed responsibility for such warranty and was liable for breach thereof where injuries resulted to customer's eye from use of such product. *Beckett v. F.*, 28NE(2d) (11)804.

Liability of manufacturer to sub-purchaser for breach of express warranty. 25MinnLawRev83.

8390. Implied warranties of quality.

Definitions by Iowa Supreme Court of "merchantable quality" and "particular purpose" as used in Iowa Uniform Sales Law held controlling in federal court action in determining existence of implied warranties. *Giant Mfg. Co. v. Y.*, (CCA8), 111F(2d)360.

Where contract of sale of a used tractor was that buyer should take the tractor "as it is," any question of warranty must be ruled out, but there can be a cause of action for fraud. *Goldfine v. J.*, 294NW459. See Dun. Dig. 8572, 8612.

Implied warranties are not in effect where a contract expressly negatives warranties of any kind. *O. S. Stapley Co. v. N.*, 110Pac(2d) (Ariz)547.

(3). Contract for sale of old engine to be dismantled and installed on buyer's premises, to be there tested and buyer to give receipt for delivery at end of three day test, held to negative implied warranty of quality. *Chiquita Min. Co. v. F.*, 104Pac(2d) (Nev)191.

(4). The rule announced in subdivision (4) of this section is modified by the first subdivision declaring that where an article is sold for particular purpose and the buyer relies on the seller's judgment there is an implied warranty, though the article has a distinctive trade name. *Ralston Purina Co. v. N.*, (CCA8), 111F(2d)631.

PART II

TRANSFER OF PROPERTY AS BETWEEN
SELLER AND BUYER**8393. Property in specific goods passes when parties so intend.**

E. Albrecht & Son v. L., (DC-Minn), 27FSupp65. Rev'd on other grounds, (CCA8), 114F(2d)202.

Change of ownership to carrier of coal in interstate shipments so as to terminate the interstate character of the shipment as affecting liability under Federal Employers' Liability Act for injuries to employee, held dependent upon contract for transference of title embracing an unqualified acceptance of an offer as required by the Uniform Sales Act. *Reading Co. v. L.*, (CCA3), 114F(2d)416, aff'g (DC-Pa), 28FSupp292. Cert. den., 61SCR 175.

The intention referred to in this section is one of fact, and such intent is manifest where the price is paid and the seller has executed a bill of sale to the buyer. *Sandford v. N.*, 13Atl(2d) (NH)723.

Where nonresident alien individual engaged in exporting rugs from Turkey to United States for sale here through resident commission merchant, sales took place in this country. *Chimchirian v. C.*, 42BTA1437.

8394. Rules for ascertaining intention.

E. Albrecht & Son v. L., (DC-Minn), 27FSupp65. Rev'd on other grounds, (CCA8), 114F(2d)202.

TRANSFER OF TITLE

8400. Sale by seller in possession of goods already sold.

Fraudulent conveyances of chattels—chattel mortgages—sales—conditional sales. 24MinnLawRev832.

PART III.

PERFORMANCE OF THE CONTRACT

8415. Seller must deliver and buyer accept goods.**1. Injuries caused by defects in thing delivered or installed.**

One who supplies an instrumentality which is dangerous if defective must respond to those injured if he negligently furnishes one that is unsafe or capable of becoming so within a short period of normal use. *Peterson v. M.*, 291NW705. See Dun. Dig. 6995.

A retail dealer of automobiles who undertakes to repair and recondition them owes a duty to public and purchaser to use reasonable care in making of tests for purpose of detecting defects. *McLeod v. H.*, 294NW479. See Dun. Dig. 8576.

One who shares in gratuitous use of a chattel by consent of a bailee or donee stands in no better position than bailee or donee with respect to his rights against bailor or donor for injuries suffered from defects. *Ruth v. H.*, 296NW136. See Dun. Dig. 6995.

8418. Delivery of wrong quantity.

Where there are shortages in deliveries of oil as shown by invoices and action is brought as for an account stated, buyer should be permitted to introduce proof of notice to plaintiff of shortages and fraud or mistake. *Leonard Refineries v. G.*, 295NW(Mich)215.

8423. Acceptance does not bar action for damages.

Buyer waived counterclaim for delay in delivery by making no objection and promises to pay on price through period of two years after delivery. *Interstate Eng. Co. v. D.*, (AppDC)112F(2d)214.

Where contract for sale of old engine to be dismantled by seller and installed on buyer's premises, and if satisfactory after three day test buyer should give seller receipt acknowledging delivery, a receipt given after the test constituted acceptance. *Chiquita Min. Co. v. F.*, 104Pac(2d) (Nev)191.

PART IV

RIGHTS OF UNPAID SELLER AGAINST THE GOODS
UNPAID SELLER'S LIEN**8428. When right of lien may be exercised.**

Fraudulent conveyances of chattels—chattel mortgages—sales—conditional sales. 24MinnLawRev832.

PART V

ACTIONS FOR BREACH OF THE CONTRACT

REMEDIES OF THE SELLER

8437. Action for the price.

Right to recover purchase price exists independent of Uniform Sales Act, and mere fact that act may require certain methods of procedure in order to recover does not affect its basic nature. *O. S. Stapley Co. v. N.*, 110Pac(2d) (Ariz)547.

REMEDIES OF THE BUYER

8441. Action for failure to deliver goods.

In action by one trading an old car for breach of contract to sell a new car, wherein it appeared that there was a unilateral mistake on the part of the defendant as to encumbrance on old car and knowledge thereof on part of plaintiff, defendant would be entitled to reformation, but plaintiff's right to be put in status quo should be protected, the old car having been resold by defendant. *Rigby v. N.*, 292NW751. See Dun. Dig. 8334a.

Provision in automobile sale contract that if seller is unable to deliver new vehicle within 30 days after specified delivery date, "purchaser may cancel order and seller's liability in that event is limited to the return of deposit", amounted to a stipulation of liquidated damages equal to allowance made for old car which was turned in to and sold by dealer. *Stanton v. M.*, 296NW521. See Dun. Dig. 8615.

In action against dealer for breach of contract of sale of automobile, evidence held to sustain finding that plaintiff was to have a credit of \$250 for old car turned in and sold and that dealer in addition assumed indebtedness to finance company on old car. *Id.*

8443. Remedies for breach of warranty.**1. In general.**

This section is applicable to both express and implied warranties. *Manley v. N.*, (DC-Pa), 32FSupp775.

Rescission must accompany the return or offer to return the goods. *Id.*

An unsuccessful attempt to rescind by action, because of unreasonable delay, is not such an election of remedy as to bar other remedies. *Heibel v. U.*, 288NW393. See Dun. Dig. 8618.

Provision in written guarantee on sale of used car that promises and understandings must be in writing, and exclusion of tires specifically, eliminated cause of action for breach of warranty in action for damages to car resulting from tire blowout. *McLeod v. H.*, 294NW479. See Dun. Dig. 8570.

Liability of manufacturer to sub-purchase for breach of express warranty. 25MinnLawRev833.

2. Rescission.

Buyer's failure to exercise right of rescission for eight months after breach of warranty, if any, must have been known to him, is unreasonable as matter of law and a bar to rescission as against seller of an air conditioning unit. *Heibel v. U.*, 288NW393. See Dun. Dig. 8607.

Trial court erred in granting judgment in favor of a counterclaiming defendant against assignee of vendors' interest in a rescinded conditional sales contract for sums paid thereunder by defendant to vendors. *Kavil v. L.*, 292NW210. See Dun. Dig. 8654.

Right of vendee to recover sums paid under rescinded contract does not rest on the agreement, but is grounded on theory that vendor, having obtained money under a contract made void by rescission, is unjustly enriched at vendee's expense and should be subjected to a legal duty to restore that which has been improperly gained, and in replevin by assignee of vendor's interest in a conditional sales contract, plaintiff may not be subjected to counterclaim for money paid to vendor based on rescission. *Id.* See Dun. Dig. 8652.

4. Diligence in discovering defects.

Trial court did not abuse its discretion in finding that notice of rescission for breach of warranty was given within a reasonable time. *Kavli v. L.*, 292NW210. See Dun. Dig. 8608.

6. Measure of damages.

In ascertaining damages to buyer of tractor because of seller's misrepresentations the amount allowable seller on account of old tractor turned in by him as part of the purchase price, was the market value thereof and not the higher turn-in value agreed upon. *Wiesehan v. C.*, 142SW(2d)(Tex)557.

8. Misrepresentation.

Buyer's independent investigation of a used tractor before sale, without more, may suggest, but does not always establish, nonreliance on seller's false representations, and it is enough if the latter were a substantial inducement to purchase. *Goldfine v. J.*, 294NW459. See Dun. Dig. 3821.

False representation, relied upon by purchaser, that a used tractor was just what buyer wanted, was in good

shape and in condition to go to work, held actionable. *Id.* See Dun. Dig. 3822.

9. Evidence.

Burden of proof is on party relying on a warranty to show the warranty and a breach thereof, and this burden is not sustained where evidence essential to proof of a breach consists of opinions of witnesses based exclusively on statements made to them by others. *Kavli v. L.*, 292NW210. See Dun. Dig. 8623.

In action for property damages sustained in an automobile accident when a tire blew out, based on negligence of seller of used car in servicing it, a speed of 45 to 50 miles an hour was no evidence of contributory negligence, though plaintiff had some difficulty in keeping car on road. *McLeod v. H.*, 294NW479. See Dun. Dig. 8626.

10. Questions for jury.

Evidence held to present issue for jury in action for breach of implied warranty of a sale of a chicken brooder. *Ray v. S.*, 200So(Ala)608.

CHAPTER 68

Frauds

STATUTE OF FRAUDS

8456. No action on agreement, when.

1. Contracts not to be performed within one year—not void but simply non-enforceable.

2. —Performance by one party within year.

While parties may have talked about a period of five years or "indicated" that performance should last at least that long, held that there was no compelling proof establishing that it was actually a contractual term definitely agreed upon. *Foster v. B.*, 291NW505. See Dun. Dig. 8859.

8459. Conveyance, etc., of land.**1. Conveyance, etc., generally.**

Since a profit a prendre is an interest in realty, it must be created, in contrast to a license, by a properly executed writing. *Minnesota Valley Gun Club v. N.*, 290NW222. See Dun. Dig. 8876.

3. Trusts.

Statute does not prevent imposition of a constructive trust upon land acquired as result of violation of duty of a general agent even though agency rests in parol. *Whitten v. W.*, 289NW509. See Dun. Dig. 8878.

CONVEYANCES FRAUDULENT AS TO PURCHASERS

8463. When made to defraud, void—Exception.

Fraudulent conveyances of chattels—chattel mortgages—sales—conditional sales. 24 MinnLaw Rev 832.

CONVEYANCES FRAUDULENT AS TO CREDITORS

8467. Of chattels without delivery.

Whether there has been a delivery of personal property and an actual and continued change of possession as required is one of fact for determination by the trial court. *Andrews v. W.*, 292NW251. See Dun. Dig. 3855.

8472. Assignment of debt.

Filing of a wage assignment with register of deeds is not compliance with this statute. *Op. Atty. Gen.* (373B-3), June 10, 1940.

8473. Sale of stock of merchandise.

Where debtor jeweler's stock in trade did not exceed value of \$9500 pledge of certain of such stock of value of \$600 as security for loan of \$300, held a pledge of a substantial part of debtor's stock not made in the ordinary course of business, and hence invalid as to creditors where requirement of California Bulk Sales Law as to recording notice of intention to transfer the merchandise were not complied with. *Markwell & Co. v. L.*, (CCA 9), 114F(2d)373, 44AmB(NS)75.

UNIFORM FRAUDULENT CONVEYANCE ACT

8475. Definition of terms.

Foreign judgment which has not been established in this state according to law is not "creditor's claim established according to law or lien upon property conveyed", within meaning of N. J. Uniform Fraudulent Conveyance Act. *Montgomery v. A.*, 17Atl(2d)(NJChan)785.

Weight of authority is to effect that fraudulent grantor may not enforce any performance on part of grantee which remains executory, though there is a conflict on this point. *Angers v. S.*, 293NW(Wis)173.

As between fraudulent grantors and grantees transfer is valid. *Id.*

Fraudulent conveyances of chattels—chattel mortgages—sales—conditional sales. 24 MinnLaw Rev 832.

8476. Insolvency.

Solvency of a transferor when he transfers his property affords evidence against a claimed fraudulent purpose, but it is only an item of evidence to be considered with other facts and circumstances in passing upon question of good faith. *Andrews v. W.*, See Dun. Dig. 3919.

8477. Fair consideration.

Discharge of a debt owing by husband does not constitute a fair consideration for a conveyance by one having creditors. *Neumeyer v. W.*, 295NW(Wis)775.

8478. Conveyance by insolvent.

Parol agreement by corporation made in December, 1936, to assign to corporation furnishing material for processing, accounts receivable of purchasers of finished material, approval of agreement Mar. 12, 1937, by directors of promisor corporation, execution of written assignment on June 26, 1937, bearing date Mar. 12, 1937, held not fraudulent, either under uniform fraudulent conveyance act, or bankruptcy act, under which adjudication was made Aug. 11, 1937, the assignor not having been insolvent on Mar. 12, 1937. *Spencer v. H.*, (CCA6) 112F(2d)221. Cert. den. 61SCR137.

Husband and wife had burden of proving that conveyance made by husband to an intermediary who conveyed to the husband and wife as tenants by the entirety without consideration did not render the husband insolvent and was not made within intent to defraud his creditors; and such burden was not satisfied by evidence of certain property possessed by the husband without the showing as to its value. *Ferguson v. J.*, 14 Atl(2d)(Pa)74.

Evidence held to sustain finding that assignment of property by debtor to pay obligation of her husband rendered her insolvent and the conveyance invalid as to her creditors. *Neumeyer v. W.*, 295NW(Wis)775.

8481. Conveyance made with intent to defraud.**6. Subsequent creditors.**

A surety on a note was a creditor of the principal at time his principal made a conveyance of property to his wife, where surety subsequently paid the note. *McDonald v. B.*, 148SW(2d)(Tenn)385.

8. Intent.

Voluntary transfer by husband to his wife of his assets without retaining sufficient property to meet his liabilities held fraudulent as to his stockholders' liability on bank stock though there was no proof of actual intent to defraud or that the wife knowingly participated in the fraud. *McKey v. R.*, (CCA7), 114F(2d)129. Cert. den. 61SCR72.

Transfer made with intent to delay creditors though made with reasonably well founded belief that it would enable debtor to weather a financial storm and pay his debts in full was invalid not only as to existing creditors but as to future creditors as well where transferee participated in such intent. *Fish v. E.*, (CCA10), 114F(2d)177, 44AmB(NS)206.

A conveyance by a debtor to satisfy an obligation of her husband for which she is not liable, rendering her insolvent, was invalid as to her creditor regardless of lack of any intentional fraud. *Neumeyer v. W.*, 295NW(Wis)775.

14. Transfer with trust for grantor.

Evidence did not require a finding of existence of a secret trust, fraudulent as to plaintiff, as claimed by him, nor was trial court required to find that payment of taxes was in fraud of creditors. *Andrews v. W.*, 292NW251. See Dun. Dig. 3854.

23. Transfers between husband and wife.

If debtor intended to defraud either present or future creditors, when he made a conveyance of land to his wife,